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COMMISSIONER



ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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AZ CORP COMMISSION
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DATE: MAY 9, 2002

DOCKET NO: S-03448A-01-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip Dion.
The recommendation has been filed in the form of an Opinion and Order on:

RONALD L. FANZO dba INTERMARC MARKETING, and
RONALD L. FANZO dba CASHFLOWS
(NOTICE OF OPPORTUNITY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 20, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 23, 2002

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission
DOCKETED

MAY 09 2002

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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 CHAIRMAN

4 JIM IRVIN
5 COMMISSIONER

6 MARC SPITZER
7 COMMISSIONER

8 IN THE MATTER OF

DOCKET NO. S-03448A-01-0000

9 RONALD L. FANZO
10 d/b/a INTERMARC MARKETING
11 7127 East Becker Lane, Ste. 90
12 Scottsdale, AZ 85254

DECISION NO. _____

13 RONALD L. FANZO
14 d/b/a CASHFLOWS
15 13020 North 96th Place
16 Scottsdale, Arizona, 85260

17 RONALD L. FANZO
18 13020 North 96th Place
19 Scottsdale, Arizona, 85260

20 Respondents.

OPINION AND ORDER

21 DATE OF HEARING: December 3, 2001

22 PLACE OF HEARING: Phoenix, Arizona

23 ADMINISTRATIVE LAW JUDGE: Philip J. Dion III

24 APPEARANCES: Ms. Kathleen Coughenour DeLaRosa, Staff Attorney,
25 Securities Division, on behalf of the Arizona
26 Corporation Commission;

27 **BY THE COMMISSION:**

28 Having considered the entire record herein and being fully advised in the premises, the
Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 20, 2001, the Securities Division ("Division") of the Arizona Corporation
Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding the Temporary
Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmative
Actions ("Notice") against Ronald L. Fanzo, d/b/a Intermarc Marketing; Ronald L. Fanzo, d/b/a
Cashflows, and Ronald L. Fanzo (collectively, "Respondents") in which the Division alleged that

1 Respondents have engaged in acts, practices and transactions that constitute violations of the Arizona
2 Securities Act ("Act").

3 2. Respondents were duly served with copies of the Notice.

4 3. On August 21, 2001, Respondent Ronald L. Fanzo filed a document with the
5 Commission that the Commission treated as a request for a hearing and pre-hearing conference for all
6 Respondents.

7 4. On August 28, 2001, the Commission issued a Procedural Order that set the matter for
8 a pre-hearing conference on September 4, 2001.

9 5. On September 4, 2001, the pre-hearing was held as scheduled. The Respondents
10 appeared without the assistance of counsel. The Division appeared with counsel. At the pre-hearing
11 conference in this matter, the parties were informed that the hearing in this case would take place on
12 December 3, 2001.

13 6. On September 26, 2001, the Division met with Mr. Fanzo, and Mr. Fanzo sat for an
14 Examination Under Oath ("EUO").

15 7. On December 3, 2001, a full public hearing was commenced before a duly authorized
16 Administrative Law Judge at the Commission's offices in Phoenix, Arizona. The Respondents failed
17 to appear for the hearing. The Division appeared and was represented by counsel. The Division
18 indicated that they were prepared to proceed and, therefore, the hearing was held in absentia.
19 Testimony was taken, and more than 10 exhibits were admitted into evidence during the course of the
20 proceeding. Following the conclusion of the hearing, closing memoranda were submitted by the
21 Division on January 3 and January 8, 2002. The matter was then taken under advisement pending
22 submission of a Recommended Opinion and Order to the Commission.

23 8. Ronald L. Fanzo, whose last known home address is 13020 North 96th Place,
24 Scottsdale, Arizona, 85260 was doing business in Arizona as an individual and under two other
25 names. The first name is Cashflows, whose last known business address is the same as Mr. Fanzo's
26 home address, and the second is Intermarc Marketing, whose last known business address is 7127 E.
27 Becker Lane, Ste. 90, Scottsdale, Arizona 85254.

28 9. Mr. Fanzo was at all relevant times the sole proprietor of Intermarc and Cashflows.

1 10. From on or about November 2000, Mr. Fanzo, through Interarc, operated Internet
2 websites (the "Interarc websites"). The Interarc websites offered an opportunity to purchase a
3 "complete turn-key package" of computer and software that purportedly would enable purchasers to
4 set up an internet business immediately upon purchase of the system.

5 11. Purchasers of an Interarc computer system would execute promissory notes agreeing
6 to pay for the system.

7 12. Mr. Fanzo, through Cashflows, operated another Internet website (the "Cashflows
8 website"). That website offered for sale promissory note investments and referred prospective
9 purchasers to the e-mail address of Mr. Fanzo.

10 13. The promissory note investments offered by Mr. Fanzo, through Cashflows, included
11 the promissory notes generated through sales of computer systems on the Interarc website.

12 14. Respondents represented that the purchasers were "high risk" borrowers who could not
13 obtain financing, other than through the Interarc websites, for the purchase of the computers and
14 software needed to set up an Internet business.

15 15. Respondents represented that purchasers of the promissory notes would realize a
16 return of at least 30 percent on their investment. The Respondents represented that the promissory
17 notes were fully secured by adequate collateral.

18 16. During the hearing, the Division called Scott Brown as a witness. Mr. Brown testified
19 that he was a civil engineer who had some investment experience. He testified he invested mainly in
20 stock and option investments through an on-line broker. Mr. Brown testified that while he was on the
21 website of Papersource On-Line, his attention was drawn to information regarding small, short-term
22 investments with 30 percent yields. Mr. Brown testified that he sent an e-mail requesting more
23 information about the investment opportunity. Mr. Brown further testified that he received a
24 response in the form of an e-mail that referred him to the Interarc websites and gave contact
25 information for a Ronald Fanzo.

26 17. Mr. Brown testified that he e-mailed Mr. Fanzo and asked for and received a sample
27 agreement and balance sheet.

28 18. Mr. Brown stated that subsequently he entered into a signed agreement between

1 himself and Mr. Fanzo and invested \$1,000 with InterMarc and Mr. Fanzo.

2 19. Mr. Brown testified the business plan, as he understood it, was that InterMarc would
3 sell computers, software and computer systems to customers who had a less than average credit
4 rating. Mr. Brown understood that his profits were derived by the rate of return on the note that
5 InterMarc was charging the customers, or if InterMarc sold the note, then the proceeds from the sale
6 to the third party would flow to him at the agreed upon rate of return.

7 20. Mr. Brown testified that it was his understanding that his capital was being used to
8 purchase computer equipment and for the marketing of the operation. He testified that he did not
9 think any of the money would be used by Mr. Fanzo personally.

10 21. Mr. Brown testified that for his \$1,000, he expected to receive his principal plus a 30
11 percent return over a six-month term as delineated in the agreement. The agreement, dated January
12 20, 2001, stated that the return on the investment would yield a 30 percent APR. Therefore, Mr.
13 Brown was to receive the \$1,159.71 on July 20, 2001, exactly 6 months after entering the agreement
14 with Respondents.

15 22. Mr. Brown testified that while the rate of return was aggressive, it was associated with
16 the fact that clients or customers of InterMarc had a below average credit rating. He went on to state
17 that he knew that it would be a risky investment and that there would be a possibility of default. He
18 further testified that when he e-mailed Mr. Fanzo about the possibility of people defaulting, Mr.
19 Fanzo replied that they had not had any defaults and that there were only a few delinquencies.

20 23. Mr. Brown testified that in early July, 2001, he contacted Mr. Fanzo and indicated that
21 he would be requesting his funds at the end of the contract and was not interested in participating any
22 further.

23 24. On July 11, 2001, Mr. Fanzo replied to the e-mail stating that Mr. Brown's money had
24 already been placed in the "queue for completing the program." Mr. Brown took this to mean that he
25 should receive his funds within the first five days of August.

26 25. On August 15, 2001, Mr. Brown e-mailed Mr. Fanzo again requesting his money. On
27 August 20, 2001, Mr. Fanzo replied that the check had already been sent to Mr. Brown, however,
28 there was an error on the address line and that he would correct that error and send Mr. Brown his

1 money immediately.

2 26. Mr. Brown indicated that he did not receive his check and again contacted Mr. Fanzo
3 at the end of August, 2001, requesting his money. Mr. Brown received a reply on October 18, 2001
4 from Mr. Fanzo indicating that Mr. Fanzo would not be able to refund his money because of an order
5 from the Commission to cease and desist all activity.

6 27. Mr. Brown testified that he assumed that the securities were registered in compliance
7 with all laws. Mr. Brown went on to testify that if he had known that Intermerc never had sold one
8 computer system, that would have made a difference in his decision to invest. He further testified
9 that had he known the balance sheet (which showed that Intermerc had \$44,150 in cash and accounts
10 receivable of \$179,000) was fabricated, it would have made a difference in his investment decision.

11 28. Mr. Brown testified that it was his understanding that his \$1,000 investment was not
12 solely limited to just one note. He testified that there would be at least three promissory notes that
13 would be used as collateral indicating that his collateral would be secured by at least three separate
14 individuals or companies in order to diversify the risk.

15 29. Mr. Brown also testified that in his security agreement, Intermerc guaranteed
16 unconditionally that the obligations due under the security agreement would be paid in full and
17 promptly and that any expenses paid or incurred by Mr. Brown to collect such obligations including
18 reasonable attorney's fees and court costs would also be paid for by Respondents. Mr. Brown
19 testified that he was given the impression that this business was a going concern, that Mr. Fanzo had
20 already contacted individuals who wished to purchase the computer systems and all that Mr. Fanzo
21 needed was investors to provide the funding.

22 30. Mr. Brown testified that he did not work for Respondents or in any way participate in
23 the business making decisions of Intermerc or Cashflows. He further testified that he never made a
24 decision as to what type of computer systems should be bought, nor did he decide who the company
25 should contract with to either sell computer systems or purchase computer systems. He testified that
26 he was simply a passive investor.

27 31. The Division called David Leifer, who is an investigator with the Securities Division,
28 to testify at the hearing. Mr. Leifer indicated that the Securities Division had received a referral from

1 the Texas Securities Division regarding the Cashflows website. Mr. Leifer stated that they began to
2 examine Cashflows and the other Respondents in December, 2000.

3 32. Mr. Leifer testified that he contacted Mr. Fanzo via e-mail in an undercover capacity.
4 Mr. Leifer testified that Mr. Fanzo replied to his e-mail indicating that he was accepting investment
5 amounts of \$1,000 up to \$20,000 in a "turn-key program" involving computer systems for business
6 start-ups and that he was looking for investors. In the reply, Mr. Fanzo promised a rate of return of
7 30 percent and stated that the use of funds would be divided between marketing and business
8 purchases. Mr. Leifer went on to testify that the Cashflows website indicated that Cashflows
9 purchases notes using pools of investor money and that those notes are checked for creditworthiness.
10 The website goes on to say that "the notes are checked for credit worthiness, but more importantly,
11 are purchased with full recourse . . . which means the seller of the note has an obligation to buy the
12 note back or provide compensation in the event of a loss. In addition, your payments come directly
13 from Cashflows and not from the note payor. This means you're never bothered by a late payment or
14 check that bounces."

15 33. Mr. Leifer testified that he clicked on the e-mail link on the bottom of the Cashflows
16 web page and that is how he contacted Mr. Fanzo. He further testified that Mr. Fanzo directed him to
17 the website of Intermerc. Mr. Leifer testified that based upon his communications with Mr. Fanzo,
18 Intermerc was the website which represented the business that generated the promissory notes that
19 Cashflows sold.

20 34. Mr. Leifer testified that in doing a search of the Intermerc website, the administrative
21 contact was listed as a Mr. Ron Fanzo with an address of 7127 E. Becker Lane, Ste. 90, Scottsdale,
22 AZ 85254.

23 35. Mr. Leifer testified that the name Intermerc Marketing was registered as a trade name
24 with the Secretary of State and the owner of such trademark was Mr. Ron Fanzo. Mr. Leifer testified
25 that Mr. Ronald Fanzo was not registered with the Commission as a licensed securities salesman or
26 dealer, which was evidenced by a Certificate of Non-Registration.

27 36. Mr. Leifer also testified that Intermerc had not filed with the Commission a Notice of
28 Filing for Securities pursuant to Article 4 of the Securities Act, which was evidenced by a Certificate

1 of Non-Registration.

2 37. Mr. Leifer testified that in his investigation, he identified five investors.

3 38. Mr. Leifer went on to testify that three of the investors received partial returns of their
4 investments. He further stated that since Intermerc never did business, it appears that the only source
5 of that money would be subsequent investors.

6 39. Mr. Leifer testified that in his e-mail correspondence with Mr. Fanzo, Mr. Fanzo sent
7 him a sample security agreement. The security agreement sent to Mr. Leifer is almost identical to the
8 security agreement signed by the investors in this case.

9 40. Mr. Leifer testified that he was present at the EUO of Mr. Fanzo. The transcript of the
10 EUO was admitted into evidence. In that examination, Mr. Fanzo admitted that he posted materials
11 on the Internet soliciting participation in his investment pool, he had sold securities agreements to the
12 investors in this case, and he acknowledged that the investors were completely passive. Additionally,
13 Mr. Fanzo stated that he did not sell any computer systems with the monies he received from the
14 investors.

15 41. Mr. Leifer stated that when Mr. Fanzo was questioned about what he did with the
16 money, Mr. Fanzo indicated he used some of it for advertisement expense, but that he also used some
17 of the money as "living expenses" which he needed so that he could continue to perpetuate the
18 business. Mr. Fanzo admitted that he never disclosed to the investors that he was going to use any of
19 the money for his own living expenses.

20 42. At his EUO, Mr. Fanzo testified that no one else participated with him in Intermerc or
21 Cashflows and that neither company had any employees. Mr. Fanzo went on to state that Cashflows
22 really "isn't a business, it was just the name of this website." When questioned further, he admitted
23 that all business was conducted through Intermerc and investments were done under the Intermerc
24 name.

25 43. When questioned about the information he provided to investors before they invested,
26 Mr. Fanzo responded that he directed them to the main Intermerc website and gave them an outline of
27 the company. He stated that he did not give them anything else other than the sample agreement. He
28 further testified that he really didn't have a "business plan" for Intermerc.

1 44. Based upon Mr. Fanzo's testimony that he never sold a computer system, the balance
2 sheet given to Mr. Brown indicating cash of \$44,155 and accounts receivable of \$179,000 appears to
3 be fabricated.

4 45. At the EUO, Mr. Fanzo stated that he came to the conclusion that he was not required
5 to be a registered agent or register the securities he offered because they were not attached to real
6 estate. He stated that he had contacted a retired attorney who had confirmed his thinking but
7 subsequently lost contact with that attorney.

8 46. After the hearing was concluded on January 8, 2002, the Securities Division filed a
9 post-hearing exhibit indicating that five individuals invested \$15,950 with the Respondents of which
10 \$3,200 was returned, leaving a balance of \$12,750 due for restitution.

11 47. The agreements entered into between Respondents and the investors are investment
12 contracts, which are securities under the Act.

13 48. Based on the evidence, the investors in this case invested money in a common
14 enterprise with an expectation of profits to be derived substantially from the efforts of others.

15 49. The invested money was placed in the sole control of Mr. Fanzo and Mr. Fanzo
16 admitted that those funds were pooled under his management.

17 50. The investors had an expectation of profit based upon Mr. Fanzo operating a
18 successful business. Their expectation of profits was delineated in their investment contract as a 30
19 percent return on their investment.

20 51. The investors relied upon the efforts of Mr. Fanzo to obtain the promised rate of return
21 and did not participate in any of the business decisions made by Respondents. Mr. Fanzo
22 substantiated this fact at his EUO when he testified that the investors in this case were passive
23 investors.

24 52. It is uncontested that the securities were never registered as required by the Act.

25 53. Mr. Fanzo solicited investments through the InterMarc and Cashflows websites. In his
26 EUO, Mr. Fanzo confirmed that he had posted materials on the internet soliciting participation in his
27 investment pool. Also, Mr. Fanzo, through InterMarc and Cashflows, directly collected more than
28 \$15,000 from investors through payments made directly to Mr. Fanzo. Based on the evidence,

1 Respondents offered and sold securities that were not properly registered.

2 54. It is uncontested that the Respondents were not registered as securities dealer(s) or
3 salesperson(s) as required by the Act.

4 55. Respondents, during the course of their business operation, misled investors by
5 omitting material facts as follows:

- 6
- 7 (a) that Respondents had never sold a computer system;
 - 8 (b) financial statements that accurately reflected the financial condition of Intermerc
and/or Cashflows;
 - 9 (c) Mr. Fanzo's business experience and background to potential investors; and
 - 10 (d) that some of the investor funds were used to pay for Mr. Fanzo's personal living
expenses.

11 56. Respondents, during the course of their business operation, made the following
misrepresentations to investors as follows:

- 12
- 13 (a) that Intermerc was a going concern with cash in excess of \$44,000 and accounts
receivable or more than \$179,000;
 - 14 (b) that Mr. Fanzo had some contracts "slip into delinquency status", but had never
had a default;
 - 15 (c) that Cashflows purchased notes whose value were always three times greater than
the amount invested to acquire the notes; and
 - 16 (d) that investor funds were to be utilized only for two purposes - marketing and
equipment purchases.

17 **CONCLUSIONS OF LAW**

18 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
19 Arizona Constitution, A.R.S. §§ 44-1801 and 44-3101 et seq.

20 2. The investment contracts between the investors and Intermerc and/or Cashflows
21 offered and sold by Mr. Fanzo were securities within the meaning of A.R.S. § 44-1801(23).

22 3. The securities were neither registered nor exempt from registration in violation of
23 A.R.S. § 44-1841.

24 4. The actions and conduct of the Respondents Intermerc, Cashflows and Mr. Ronald
25 Fanzo constitute the offer and/or sales of securities within the meaning of A.R.S. §§ 44-1801(13) and
26 44-1801(19).

27 5. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo offered and/or sold
28 unregistered securities from Arizona in violation of A.R.S. § 44-1841.

1 6. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo are dealers or salesmen
2 within the meaning of A.R.S. § 44-1801(9) and § 44-1801(20).

3 7. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo offered and/or sold
4 securities from Arizona without being registered as dealers or salesmen in violation of A.R.S. § 44-
5 1842.

6 8. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo violated the anti-fraud
7 provisions of A.R.S. § 44-1991 in the manner set forth hereinabove.

8 9. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo are found herein to have
9 violated the Securities Act, should cease and desist pursuant to A.R.S. § 44-2032 from any future
10 violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991 and all other provisions of the Securities Act.

11 10. Respondents Intermerc, Cashflows and Mr. Ronald Fanzo should be jointly and
12 severally liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-308 totaling
13 \$12,750, subject to any legal set-offs.

14 11. With respect to the securities agreements that were offered, all of the above-named
15 Respondents should be assessed an administrative penalty jointly and severally pursuant to A.R.S. §
16 44-2036 as follows: for the violation of A.R.S. § 44-1841, the sum of \$2,500; for the violation of
17 A.R.S. § 44-1842, the sum of \$2,500; and for the violation of A.R.S. § 44-1991, the sum of \$10,000.

18 **ORDER**

19 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
20 under A.R.S. § 44-2032, Respondents Intermerc Marketing, Cashflows and Ronald L. Fanzo shall
21 cease and desist from actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-1842 and
22 44-1991.

23 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
24 A.R.S. § 44-2036, Respondents Intermerc Marketing, Cashflows and Ronald L. Fanzo shall jointly
25 and severally pay as administrative penalties: for the violation of A.R.S. § 44-1841, the sum of
26 \$2,500; for the violation of A.R.S. § 44-1842, the sum of \$2,500; and for the violation of A.R.S. §
27 44-1991, the sum of \$10,000.

28 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be

1 made payable to the State Treasurer for deposit in the general fund for the State of Arizona.

2 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be
3 bear an interest rate of 10 percent per year for any outstanding balance after 60 days from the
4 effective date of this Decision.

5 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
6 A.R.S. § 44-2032, Respondents Intermarc Marketing, Cashflows and Ronald L. Fanzo jointly and
7 severally shall make restitution in an amount not to exceed \$12,750, subject to any legal set-offs
8 confirmed by the Director of Securities, and said restitution is to be made within 60 days of the
9 effective date of this Decision.

10 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear an interest
11 rate of 10 percent per year for the period from the dates of the investment to the date of payment of
12 restitution by Respondents.

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1 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
2 deposited into an interest bearing account(s) if appropriate, until distributions are made.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN

COMMISSIONER

COMMISSIONER

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9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2002.

14 BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____
16 PJD:mlj
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1 SERVICE LIST FOR: RONALD L. FANZO

2 DOCKET NO. S-03448A-01-0000

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4 RONALD L. FANZO
d/b/a INTERMARC MARKETING
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